IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NO. 395 OF 2006

State
through P.I. attached
to Ponda Police Station,
Ponda, Goa. ... Applicant

versus

1. Shri Pramod H. Kurtikar
   Business, H. No. 12
   Pansulem, Tisk, Usgao
   Ponda-Goa.

2. Shri Mahadev Shetkar
   H. No. 29, Kumbharwada,
   Sacorda Sanguem-Goa.

3. Shri Sagar Kurtikar
   H. No. 29, Pansulem,
   Dharbandora,
   Sanguem-Goa. ... Respondents

Mr. Carlos A. Ferreira, Public Prosecutor for the State/Applicant.

Mr. V. A. Lawande, Advocate for the Respondent No.1.

Mr. S. A. Samant, Advocate for the Respondent Nos.2 and 3.

CORAM : N. A. BRITTO, J.

DATE : 17TH JANUARY, 2007.

ORAL ORDER

The State has sought leave to appeal against the acquittal of the accused under Sections 341, 307 r/w 34 I.P.C., by Judgment dated 26-5-2006 of the learned Assistant Sessions Judge.

2. The alleged incident took place on 31-7-2000 in the morning when Gurunath Usgaonkar/PW3 had gone for a walk, after parking his scooter. The allegation was that all the three accused came on a scooter, overtook the said Gurunath and assaulted him, with weapons like a knife, koita, cricket bat and an iron rod, all over his body. Gurunath was taken to I. D. Hospital where he was examined by Dr. Smeeta Parsekar and from there to Goa Medical College where he was examined by Dr. Kapil Sharada and was operated upon by PW13/Dr. Deelip Amonkar. The F.I.R. came to be lodged against A-1/Pramod and A-3/Sagar and an unknown person. By supplementary statement

recorded on the next day, the said unknown person came to be identified as A-2/Mahadev.

3. In the course of the trial, 15 witnesses were examined. Admittedly, there were no eye witnesses to the incident except the injured PW3/Gurunath Usgaonkar though it was stated that after he was assaulted a bus and a trax vehicle had passed by that side, but had not stopped. The injured Gurunath in his evidence stated that he was not aware that he was taken to I.D. Hospital at Ponda but PW11/Dr. Parsekar who examined him had stated that PW3/Gurunath was conscious and was talking and had given the history of assault. Apparently, there is long drawn enmity on account of property disputes between A-1/Pramod and A-3/Sagar. PW3/Gurunath himself is not sure as to when the alleged incident had taken place. In one breath, he had stated that the incident had taken place at about 6.30 a.m. when it was dark and in another breath he stated that it had taken place at 6.45 a.m. when it was bright. He had also stated that one of the persons who had come on the scooter was wearing a helmet, and, therefore if incident had taken place when it was dark, it is quite probable that PW3/Gurunath was

unable to identify his assailants and the possibility that his brother had falsely implicated initially A-1/Pramod, A-3/Sagar and later A-2/Mahadev could not be ruled out. The learned trial Court has also noted that there was divergence in the evidence given by the two Medical Officers, namely PW11/Dr. Parsekar and PW13/Dr. Amonkar who was examined in place of Dr. Kapil Sharada who had issued the medical certificate mentioning injuries which did not at all tally with the injuries as noted by PW11/Dr. Parsekar. In fact, the evidence of PW3/Gurunath does not at all inspire confidence and this has been taken note of by the learned Assistant Sessions Judge in giving benefit of doubt and acquitting the accused. The cross-examination of PW3/Gurunath shows that he does not recollect any of the details which normally he ought to have recollected in relation to the incident. Apparently, PW3/Gurunath while he was in Goa Medical College was operated upon and was not in a position to talk and if he could talk he could have also given all the three names of the accused to his brother PW1/Dr. Ugam on the very first day when PW1/Dr. Ugam lodged his complaint giving the names of A-1/Pramod and A-3/Mahadev alone and mentioning the third accused as an unknown person.

4. The evidence led by the prosecution has been meticulously considered by the learned trial Court. In fact, considering the evidence produced the view of giving benefit of doubt to the accused was the only view which was possible. There is no merit in this application and consequently the same is hereby dismissed.

N. A. BRITTO, J.

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